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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/810,858	03/16/2001	Ian J. Forster	4579-116	6167

27820 7590 11/04/2003

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EXAMINER

WIMER, MICHAEL C

ART UNIT	PAPER NUMBER
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2821

DATE MAILED: 11/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/810,858

Applicant(s)

FORSTER ET AL.

Examiner

Michael C. Wimer

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 August 2003.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-52 is/are pending in the application.
- 4a) Of the above claim(s) 1-32 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 33-40 and 47-52 is/are allowed.
- 6) ☒ Claim(s) 41-46 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 9.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION

Election/Restrictions

1. Claim 1-32 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to nonelected claims, there being no allowable generic or linking claim.

Election was made **without** traverse in Paper No. 7.

Claim Rejections - 35 USC § 112

2. Claims 41-46 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In Claim 41, lines 3 and 4, the problem set forth in the previous Office action still exists. Specifically, the language "at least antenna" is not understood and therefore is indefinite. It is unclear if this language is to make reference to a single antenna of the array (as amended in line 5) or any other antenna and/or array.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 41-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brady et al. (6166638).

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Regarding Claims 41 and 46, Brady et al show and teach in Fig. 8 shows a method of communicating with stacked objects 71-73 containing wireless communication devices 74-76 comprising the steps of activating a switch to provide a coupling to at least one antenna in an array (i.e., the array consists of the interrogator's antenna and the antennas of the transponders 74-76, from which there is EM coupling, as claimed), where the interrogator 82 has at least one antenna and the interrogator must be turned on, via a switch, to radiate the beam therefrom; exciting the at least one antenna with energy, and radiating the energy from the at least one antenna to the stacked objects, where the interrogator detects at least one beam from the objects 71-73 (it is assumed that the transponders 74-76 are passive as stated in col. 4, lines 34-50). It is obvious to the skilled artisan that the interrogator must be switched on to radiate the energy/beam at the objects 71-73. No switch is specifically taught by Brady et al. The interrogator does not always emit radiation. A skilled artisan would have found it obvious to provide a switch on the interrogator.

Regarding Claim 42, low energy is provided as recited, since modulated back-scattering of the RF field is employed.

Regarding Claim 43, high energy is provided as recited. In both cases, the energy level radiated is relative, and the distance is critical to establish a communication link. Varying the power is an obvious variable in which the skilled artisan designs in order to establish the link within the specified volume of space in which the device is employed.

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Regarding Claim 44, the energy is reflected back so the interrogator can compare the signals from the transponders (col. 4, lines 37-40).

Regarding Claim 45, it would have been obvious to the skilled artisan that the height of the objects is determined by receiving energy by the highest transponder.

Response to Arguments

5. Applicant's arguments filed 14 August 2003 have been fully considered but they are not persuasive. Specifically, as noted in the above rejection, the antenna array is considered any antennas used in the communication system, those in the interrogator and those part of the transponders on the packages. An activating switch is part of an RF device, since RF is not continuously radiated, but activated only when desired. Thus, it is not seen that these claims patentably define over the prior art of record. The rejection stands.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael C. Wimer whose telephone number is (703) 305-3555. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Don K. Wong can be reached on (703) 308-4856. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.



Michael C. Wimer
Primary Examiner
Art Unit 2821

MCW
26 October 2003